STATE OF MICHIGAN

COURT OF APPEALS

In re AGGAS, Minors.

UNPUBLISHED
December 30, 2014

No. 321771
Oakland Circuit Court
Family Division
LC No. 13-808202-NA

Before: MURRAY, P.J., and SAAD and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to his two daughters pursuant to MCL 712A.19b(3)(c)(*i*), (3)(g), (3)(j), and (3)(*l*).[1] For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

The Department of Human Services ("DHS") filed a petition to terminate respondent's parental rights because respondent: (1) was convicted of heinous acts of child abuse against his son in 2004;[2] and (2) pled guilty to a domestic violence charge in 2013 for punching his pregnant girlfriend in the back of the head.

At the adjudication hearing, DHS presented evidence that respondent abused drugs and was mentally unstable. The court also heard testimony from a psychologist who recommended terminating respondent's parental rights because of his "unemployment, lack of housing, lack of transportation, untreated mental health issues, substance use, failure to benefit from prior services, struggle to maintain compliance with the rules of the court and the degree of violence

[1] Respectively, these subsections of MCL 712A.19b(3) terminate parental rights when: (1) more than 182 days have elapsed and the conditions that led to adjudication continue to exist; (2) the parent, without regard to intent, fails to provide proper care; (3) there is a reasonable likelihood based on the parent's conduct and capacity that the child will be harmed if returned to his care; and (4) the parent's right to another child has been terminated.

[2] Respondent's parental rights to the abused child were terminated in February 2005, based on his child abuse conviction.

he has perpetrated upon his son and [girlfriend]." The court heard opposing testimony from respondent and his girlfriend, who both supported respondent's retention of parental rights

Based on the above evidence, the trial court took jurisdiction over the minor children pursuant to MCL 712A.2(b), and stated that statutory grounds for termination were present. Respondent's attorney consented to this finding of jurisdiction at the time, and later entered a plea of no contest as to the existence of jurisdiction under MCL 712A.2(b). In so doing, respondent waived his right to a hearing on the trial court's assertion of jurisdiction over the minor children.

The trial court then held a best interests hearing, where it heard testimony from a Child Protective Services investigator and respondent. It subsequently issued a thorough written opinion and order in which it terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (3)(g), 3(j) and (3)(*l*) and found it was in the children's best interests to do so.

On appeal, respondent says that the trial court erred when it exercised jurisdiction over his children because the trial court: (1) never acquired initial jurisdiction over his children; and (2) did not have statutory grounds to terminate his parental rights. He also argues that termination was not in the best interests of his children.

II. STANDARD OF REVIEW

A trial court's findings and determination that sufficient grounds existed under MCL 712A.2(b) to assert jurisdiction over the minor children are reviewed for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). We review "the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *Id.* Our consideration of unpreserved claims on appeal "is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

We review a trial court's factual finding that statutory grounds for termination have been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

A court's finding of fact on the determination of a child's best interests are also reviewed for clear error. *In re COH, ERH, JRG, & KBH*, 495 Mich 184, 204; 848 NW2d 107 (2014).

III. ANALYSIS

A. JURISDICTIONAL ISSUES

1. MCL 712A.2(B)

A trial court acquires jurisdiction over a minor child when the trial court determines by a preponderance of the evidence that the allegations in the petition satisfy the conditions of MCL 712A.2(b). See *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). Specifically, MCL 712A.2(b)(2) states that jurisdiction is found when a minor child "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, . . . is an unfit place for the juvenile to live in." However, a respondent can enter a plea of no contest, pursuant to MCR 3.971(A), which obviates the need to find a statutory basis for jurisdiction. *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008).

Here, respondent wrongly claims that the trial court did not acquire jurisdiction under MCL 712A.2(b)—in fact, respondent signed a plea of admission of no contest, and even initialed the plea to indicate that he understood his admission. In the plea, respondent chose to waive a hearing on the trial court's jurisdiction over his children. Because a respondent can consent or enter a plea to jurisdiction, the trial court properly concluded it had jurisdiction over the minor children. *In re Bechard*, 211 Mich App 155, 160; 535 NW2d 220 (1995). Moreover, the allegations in DHS' petition established, by a preponderance of the evidence, the conditions specified in MCL 712A.2(b). Accordingly, respondent's argument that the trial court never acquired jurisdiction over his children pursuant to MCL 712A.2(b) has no merit whatsoever.

2. STATUTORY GROUNDS FOR TERMINATION: MCL 712A.19B(3)

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground [for termination] has been established." *Moss*, 301 Mich App at 80. A court's factual findings are sufficient as long as it appears that the court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Here, respondent's assertion that the trial court lacked statutory grounds for termination is completely frivolous. The trial court properly found statutory grounds for termination because it heard extensive evidence that supported termination under multiple statutory grounds. As noted, respondent has a history of abuse including: drugs, his girlfriend, his son—and did not demonstrate that he was willing to change his behavior, all of which warranted termination under MCL 712A.19b(3)(c)(*i*), (3)(g), and (3)(j). And his parental rights to his son have already been terminated due to horrific abuse, which warrants termination under MCL 712A.19b(3)(*l*). The trial court therefore correctly applied the law and found statutory grounds for termination under the above subsections of MCL 712A.19b(3).

B. BEST INTERESTS OF THE CHILDREN

Whether termination is in the best interests of the children is based on the preponderance of the evidence. *Moss*, 301 Mich App at 83. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality . . . ." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations and quotations omitted). Furthermore, a court can consider a parent's abuse and neglect when determining whether termination is in the minor children's best interests. *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2001), overruled on other grounds by *In re Sanders*, 495 Mich 394 (2014).

Here, for the reasons explained above, the trial court properly found that it was in the children's best interests to terminate respondent's parental rights. Respondent is prone to violence, and his beating of his son and girlfriend shows that his home is not a safe environment for the children. His unemployment renders him unable to provide the children with stability, food, clothing, or shelter. And finally, he has a minimal bond with one child and no bond with the other. Accordingly, the trial court correctly held that termination was in the children's best interests, and respondent's protestations to the contrary are unavailing.

Affirmed.

/s/ Christopher M. Murray
/s/ Henry William Saad
/s/ Joel P. Hoekstra